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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Implementation of Section 309(j)
of the Communications Act -
Competitive Bidding

PP Docket No. 93-253

DOCKET FILE COPY ORIGINAL

To: William F. Caton, Secretary

MEMORANDUM OF ORAL EX PARTE PRESENTATION

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, 47 C.F.R. § 1.1206(a)(2) (1993), this memorandum summarizes an oral ex parte presentation in the above-captioned docket, made to Peter Tenhula and Sara Seidman, Office of General Counsel, and Gregory Rosston, Office of Plans and Policy, on October 21, 1994 on behalf of Minnesota Equal Access Network Services, Inc. (MEANS) and South Dakota Network, Inc. (SDN). The presentations were made by David Kelley, President and CEO of MEANS, and John A. Prendergast and Susan Bahr of the law firm of Blooston, Mordkofsky, Jackson & Dickens, Washington, D.C., counsel for MEANS and SDN.

The substance of the presentation may be found in the Petition for Partial Reconsideration, Comments and Partial Opposition, and Reply concerning the Commission's Fifth Report and Order, which were jointly filed by MEANS and SDN in the above-captioned docket.

In particular, the presentation concerned the attribution and affiliation rules for the broadband PCS entrepreneurs' blocks

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auction, and whether they would preclude MEANS and SDN from participating in the entrepreneurs' blocks auction. These issues were discussed in MEANS and SDN's Comments and Partial Opposition, filed September 9, 1994.

Interest of MEANS and SDN

MEANS and SDN are corporations owned by rural, primarily small, telephone companies which provide centralized equal access and other sophisticated Information Age services to rural parts of Minnesota and South Dakota. This Commission, several state regulatory commissions and public policy commentators have all found that the construction and operation of these centralized equal access networks is decidedly in the public interest.¹

¹ E.g., Memorandum Opinion, Order and Certificate (MIEAC), File No. W-P-C-6400, released Aug. 22, 1990 (MEANS) (recognizing public interest benefit of constructing and leasing facilities for the aggregation of equal access traffic); Memorandum Opinion, Order and Certificate (SDCEA, Inc.), 5 FCC Rcd. 6978, 6981 (Dom. Fac. Div. 1990) (SDN) (recognizing SDN as having the potential for implementing in rural areas "the important Commission goal of making available more competitive, varied, high quality interstate services"); Edwin B. Parker & Heather E. Hudson, Electronic Byways: State Policies for Rural Development Through Telecommunications 77-80 (1992) (report prepared for The Aspen Institute) (recognizing MEANS and SDN for expanding new and competitive services to rural areas and stating that regulators should "explore new regulatory approaches that can unleash new applications and benefits that will contribute to economic development"); see generally Order (NECA: Petition for Waiver of Equal Access Balloting Requirements), 6 FCC Rcd. 4789 (Com. Car. Bur. 1991) (MEANS); Order (NECA: Petition for Waiver of Equal Access Balloting Requirements), 7 FCC Rcd. 2364 (Com. Car. Bur. 1992) (SDN); Report and Order and Further Notice of Proposed Rulemaking (Transport Rate Structure and Pricing), 7 FCC Rcd. 7006, 7049 (1992), modified, 8 FCC Rcd. 5370, 5387 (1993) (providing an exemption for centralized equal access providers from the requirement to provide direct-trunked transport service).

MEANS, SDN and their member rural telephone companies desire to participate in the FCC's forthcoming broadband PCS auctions; as a matter of economic reality, they must be able to qualify for bidding in the entrepreneurs' blocks if these companies are to provide PCS service to the sparsely populated rural areas which they serve.

Attribution and Affiliation Rules

Despite the fact that the members of both companies are overwhelmingly "small businesses," MEANS and SDN seek clarification that the attribution and affiliation rules would not disqualify MEANS and SDN from participating in the entrepreneurs' blocks auction by requiring the revenues and assets of their member companies to be added together, and consequently exceed the revenues and assets limits. If the Commission should decide not to provide such clarification, MEANS and SDN respectfully request the Commission to exempt existing centralized equal access providers from the entrepreneurs' blocks eligibility/attribution rules or affiliation rules. An exemption could be adopted as a new subsection to Section 24.709 of the Commission's Rules, 47 C.F.R. § 24.709, as follows:

Proposed Section 24.709(f): Notwithstanding the provisions of Section 24.709(a)-(e), FCC-approved centralized equal access providers (having authority under 47 U.S.C. § 214), with their member local exchange carriers, are eligible for licenses for frequency Block C and frequency Block F.

Alternatively, in the event that the Commission would determine that the eligibility and attribution rules would

disqualify MEANS and SDN from participating in the entrepreneurs' blocks auction, but decide not to grant an exemption, the members of MEANS and SDN, in the alternative, could reform into small business consortia consisting of their respective member telephone companies that satisfy the small business and cellular cross-ownership rules. Notably this would destroy the integrity of a group which this Commission has previously found to be in the public interest. MEANS and SDN request the Commission to clarify that such consortia would qualify as small business consortia and may pursue entrepreneurs' blocks licenses without affiliation problems associated with the fact that the networks exist,² and to clarify that the networks themselves may be utilized by PCS licensees, consisting of their members, in order to deploy PCS into the BTAs for which licenses are won.³

² MEANS and SDN are concerned about whether they would be considered affiliates of their member rural telephone companies based on application of three of the Commission's affiliation rules: (a) common facilities, 47 C.F.R. § 24.720(1)(8); (b) stock ownership, 47 C.F.R. § 24.720(1)(4); and (c) identity of interest, 47 C.F.R. § 24.720(1)(3).

MEANS and SDN additionally are concerned that the revenues and assets of all of the member telephone companies would be cumulatively attributed to each of the small telephone companies in such a consortium, in accordance with Section 24.709(b)(1) of the Commission's Rules, 47 C.F.R. § 24.709(b)(1), if the member telephone companies would be considered to be affiliates of affiliates (*i.e.*, MEANS and SDN) of each of the member telephone companies in the consortia. MEANS and SDN therefore seek clarification as to the proper interpretation of Section 24.709(b)(1) and/or exemption as discussed further below.

³ MEANS and SDN are concerned that the common facilities rule could prevent such small business consortia formed of their member companies from using the MEANS and SDN networks, thereby denying to the public the very benefits for which these networks were formed.

Should the Commission decide that the rules do not lend themselves to such clarification, MEANS and SDN request the Commission to exempt existing centralized equal access providers from being considered affiliates of their member telephone companies, so that the member telephone companies would not be prohibited from forming small business consortia. Such an exemption could be adopted as a new subsection to Section 24.720(1) of the Commission's Rules, 47 C.F.R. § 24.720(1), as follows:

Proposed Section 24.720(1)(11): Notwithstanding the provisions of Sections 24.720(1)(1)-(10), an FCC-approved centralized equal access provider (having authority under 47 U.S.C. § 214) is not an affiliate of any of its member telephone companies.

In sum, MEANS and SDN request either clarification or an exemption so that MEANS and SDN, or small business consortia formed of their member companies, may participate in the entrepreneurs' blocks auction with the purpose of capitalizing on their existing centralized equal access networks to provide PCS service to rural areas.

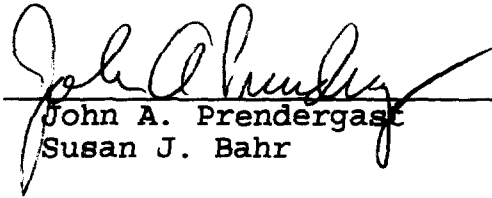
A summary of the exemptions requested by MEANS and SDN was distributed as part of the presentation and is enclosed herein.

Pursuant to Section 1.206(a)(2), this memorandum and one copy are being submitted to the Secretary, and copies are being delivered to Peter Tenhula, Sara Seidman and Gregory Rosston.

Respectfully submitted,

**MINNESOTA EQUAL ACCESS NETWORK
SERVICES, INC. and
SOUTH DAKOTA NETWORK, INC.**

By



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Dated: October 21, 1994

MINNESOTA EQUAL ACCESS NETWORK SERVICES, INC.
AND SOUTH DAKOTA NETWORK, INC.

If the entrepreneurs' blocks eligibility and attribution rules would preclude Minnesota Equal Access Network Services, Inc. (MEANS) and South Dakota Network, Inc. (SDN) from being eligible to participate in the entrepreneurs' blocks auction, MEANS and SDN request the following exemption from the attribution rules:

Proposed Section 24.709(f): Notwithstanding the provisions of Section 24.709(a)-(e), FCC-approved centralized equal access providers (having authority under 47 U.S.C. § 214), with their member local exchange carriers, are eligible for licenses for frequency Block C and frequency Block F.

In the alternative, if consortia formed of their member rural telephone companies that individually satisfy the small business and cellular cross-ownership rules would not qualify as a small business consortia, MEANS and SDN request the following exemption from the affiliation rules:

Proposed Section 24.720(1)(11): Notwithstanding the provisions of Sections 24.720(1)(1)-(10), an FCC-approved centralized equal access provider (having authority under 47 U.S.C. § 214) is not an affiliate of any of its member telephone companies.